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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

In re J.S., a Person Coming Under the
Juvenile Court Law.

H039460
(Santa Clara County
Super. Ct. No. JD20945)

SANTA CLARA COUNTY
DEPARTMENT OF FAMILY AND
CHILDREN'S SERVICES,

Plaintiff and Respondent,

v.

K.C.,

Defendant and Appellant.

Appellant K.C. (the mother) challenges the order terminating her parental rights to her son J.S. (the child). Her sole contention on appeal is that the juvenile court erred in finding that the Indian Child Welfare Act of 1978 (25 U.S.C. § 1901 et seq.) (the ICWA) did not apply and failing to require the Santa Clara County Department of Family and Children's Services (the Department) to comply with the ICWA's notice requirements after the mother reported that she had Navajo Indian heritage. The Department concedes that it failed to comply with the ICWA's notice requirements, agrees that a reversal is required, and offers to stipulate to a conditional reversal of the court's order. We see no

advantage to a stipulated reversal in this case since we agree with the parties that a reversal is required.

The child was detained at birth in November 2011 and placed in foster care two days later.¹ The mother told the Department within a week of the child's detention that she believed her family had Navajo heritage. She said that her "biological grandfather" "might have Navajo Indian heritage" and gave the Department his name (Vincent B.), age, and state of residence. She also gave the Department her aunt's first name and telephone number. The Department tried unsuccessfully to reach the aunt.

The Department thereafter told the court that its "case file" from when the mother was a dependent child "indicated that the mother's mother (grandmother, L[.] D[.]) was adopted when she was an infant by Mr. Vincent B[.] and his wife, S[.] F[.], and therefore it does not fall under the ICWA noticing guideline." The Department concluded that the ICWA did not apply because "the maternal grandmother, L[.] D[.] was adopted."

At a January 2012 hearing, prior to the jurisdictional hearing, the Department told the court: "[S]ince this child is not blood related to anyone who is even several generations back who is enrolled, the court has no reason to believe that this child is an Indian child." The juvenile court accepted the Department's claim and found that the ICWA therefore did not apply. Throughout the proceedings below, the Department continued to hold to its position that the ICWA was inapplicable because the child was not biologically related to his Indian great-grandfather. In March 2013, the court terminated the mother's parental rights to the child. The mother timely filed a notice of appeal from the termination order, and she challenges only the court's finding that the ICWA was inapplicable.

"[W]hen it comes to the determination of a child's Indian tribe membership status, it is for the tribe itself to make that determination." (*In re B.R.* (2009) 176 Cal.App.4th

¹ The child has thrived in the care of the foster parents, and they plan to adopt him.

773, 782 (*B.R.*.) In *B.R.*, “the minors were not the biological children of a parent with Indian blood. They are the grandchildren by adoption of an ancestor with Indian blood.” (*Id.* at p. 783.) The Court of Appeal held in *B.R.* that the ICWA’s notice requirements were not inapplicable due to the adoption because it was for the tribe, not the Department or the juvenile court, to determine whether the child was a member of the tribe. (*Ibid.*) The same is true here. The Department and the juvenile court were not authorized to determine that the child was not a member of the Navajo tribe. That was a determination for the tribe that could not be made without notifying the tribe. The appropriate remedy is a reversal and remand for compliance with the ICWA’s notice provisions.

The juvenile court’s termination order is reversed. On remand, the juvenile court shall require the Department to comply with the ICWA’s notice requirements. If the tribe determines that the child is an Indian child, the court shall conduct all appropriate proceedings in accordance with the ICWA. If the child is determined not to be an Indian child, the juvenile court shall reinstate its termination order.

Mihara, J.

WE CONCUR:

Elia, Acting P. J.

Grover, J.